

**Rule 609. Impeachment by Evidence of a Criminal Conviction.**

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than 1 year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subsection (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than 1 year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

**(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

**Comment to 2012 Amendment**

This rule has been amended to conform to Federal Rule of Evidence 609, including changing "credibility" to "character for truthfulness" in subsection (a) and adding language to the last clause

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of subdivision (a)(2) to clarify that this evidence may be admitted only “if the court can readily determine that establishing the elements of the crime required proving—or the witness’s admitting—a dishonest act or false statement.”

Additionally, the language of Rule 609 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

### Comment to Original 1977 Rule

Subsection (d) is contrary to the provisions of A.R.S. § 8-207, but in criminal cases due process may require that the fact of a juvenile adjudication be admitted to show the existence of possible bias and prejudice. *Davis v. Alaska*, 415 U.S. 308 (1974). The fact of a juvenile delinquency adjudication may not be used to impeach the general credibility of a witness. The admission of such evidence may be necessary to meet due process standards.

### Cases

#### Paragraph (a) — General rule.

**609.a.010** Because this Rule provides that a trial court may admit evidence of a prior conviction “if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect,” the party seeking to impeach has the burden of establishing the probative value of the prior conviction and that its probative value outweighs the prejudicial effect; this is in contrast to Rule 403, which provides a trial court may exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice,” and thus places on the party seeking to exclude relevant evidence the burden of proving that the prejudicial effect outweighs the probative value.

*State v. Beasley*, 205 Ariz. 334, 70 P.3d 463, ¶ 21 (Ct. App. 2003) (court held, “under Rule 609, the defendant is not required to demonstrate that the prejudice of the impeachment is ‘unfair’ or that the prejudice of the impeachment ‘substantially’ outweighs its probative value”).

**609.a.020** A felony has probative value on the issue of the credibility of the witness because a major crime entails such an injury to and disregard of the rights of other persons that it can reasonably be expected that the witness will be untruthful if it is to his or her advantage.

*State v. Green*, 200 Ariz. 496, 29 P.3d 271, ¶ 8 (2001) (trial court admitted 12-year-old felony under Rule 609(b); court held trial court erred in considering only one factor (centrality of credibility issue) and not considering other factors).

*Ritchie v. Krasner*, 221 Ariz. 288, 211 P.3d 1272, ¶¶ 46 (Ct App. 2009) (defendant contended trial court abused discretion in precluding evidence of plaintiff’s prior felony conviction; court noted that felony conviction was admissible only to attack plaintiff’s credibility as witness, and only time plaintiff testified was at deposition; because defendant failed to raise timely plaintiff’s conviction during deposition, trial court did not abuse discretion in excluding evidence of plaintiff’s felony conviction at trial).

*State v. Hernandez*, 191 Ariz. 553, 959 P.2d 810, ¶ 22 (Ct. App. 1998) (court held conviction for crime defendant committed after the crime for which he was on trial was admissible for impeachment).

## WITNESSES

**609.a.025** A witness may be impeached with a prior conviction punishable by death or imprisonment in excess of 1 year.

*State ex rel. Romley v. Martin (Landeros)*, 205 Ariz. 279, 69 P.3d 1000, ¶¶ 1–24 (2003) (court stated that, while *State v. Christian* and *State v. Thues* make plain Proposition 200 offenses are felonies, Rule 609 does not involve technical definition of felony, but instead uses punishment in excess of 1 year; because person could not be imprisoned in excess of 1 year for first or second Proposition 200 offense, person may not be impeached with evidence of conviction of first or second Prop 200 offense).

*State v. Hatch*, 225 Ariz. 409, 239 P.3d 432, ¶¶ 6–14 (Ct. App. 2010) (although Proposition 200 provided that person with first or second conviction of drug offense had to be placed on probation and thus could not be imprisoned in excess of 1 year, Proposition 302 provided that trial court could sentence person to prison if they failed to comply with certain conditions of probation, thus trial court properly allowed defendant to be impeached with conviction for possession of drug paraphernalia).

**609.a.035** In determining whether to admit a prior conviction for impeachment purposes, the trial court should consider such factors as the nature of the prior offense, the similarity of the prior offense and the present charged offense, the age of the witness, the remoteness of the conviction, the length of the prior imprisonment, the witness's conduct since the prior offense, the importance of the witness's testimony, and the centrality of credibility issue.

*State v. Green*, 200 Ariz. 496, 29 P.3d 271, ¶ 12 (2001) (trial court admitted 12-year-old felony under Rule 609(b); court held trial court erred in considering only one factor (centrality of credibility issue) and not considering other factors).

**609.a.040** A misdemeanor is admissible only if it involves some element of deceit, untruthfulness, or falsification.

*Frederickson v. Superior Ct.*, 187 Ariz. 273, 928 P.2d 697 (Ct. App. 1996) (holds that leaving scene of accident is crime of moral turpitude in determining whether defendant was entitled to jury trial, but cites cases that made this holding under Rule 609).

**609.a.080** Impeaching a witness with a prior felony conviction is limited to showing the fact of the conviction, the name of the crime, the place, and the date.

*State v. Dunlap*, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (once witness stated he had been convicted of vehicular manslaughter, prosecutor erred in asking witness whether it was true that he was drunk, ran a red light, and killed somebody).

*State v. Doody*, 187 Ariz. 363, 930 P.2d 440 (Ct. App. 1996) (because facts of witness's prior crime were not relevant to any issue in case, trial court properly precluded defendant from inquiring into details of prior crime).

**609.a.170** Evidence of multiple felony convictions is not necessarily unfairly prejudicial.

*State v. Hernandez*, 191 Ariz. 553, 959 P.2d 810, ¶¶ 27–32 (Ct. App. 1998) (court rejected defendant's contention that multiple convictions for offenses committed on the same occasion should be treated as one conviction for impeachment).

**609.a.180** The trial court has discretion to impose limits in order to minimize prejudice, such as "sanitizing" the conviction by not disclosing the nature of the prior conviction.

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*State v. Montañño*, 204 Ariz. 413, 65 P.3d 61, ¶¶ 64–66 (2003) (witness who was prison inmate had prior convictions for child pornography and attempted child molestation for crimes committed approximately 1 to 2 years prior to defendant's trial; trial court admitted fact of prior convictions, but precluded details of prior convictions; defendant contended nature of prior convictions was relevant because it gave witness motive to testify, that is, if other inmates found out witness was child molester, they would have killed him, thus witness made up testimony to get out of general population; court held trial court did not abuse discretion in precluding details of prior conviction, noting defendant was still able to bring out fact of prior convictions, but did not address defendant's contention that nature of prior conviction had own independent relevance because it gave witness motive to testify).

*State v. Beasley*, 205 Ariz. 334, 70 P.3d 463, ¶¶ 16–26 (Ct. App. 2003) (defendant was charged with aggravated assault and attempted murder as result of trying to escape from police; trial court ruled that state could impeach defendant with prior convictions for armed robbery, two counts of aggravated assault on police officer, resisting arrest, and two other counts of aggravated assault and allowed state to disclose nature of prior convictions; court held trial court erred in not balancing prejudicial effect of nature of prior convictions against probative value of nature of prior convictions, but that error was harmless).

*State v. Cox*, 201 Ariz. 464, 37 P.3d 437, ¶¶ 2–6 (Ct. App. 2002) (trial court allowed victim to be impeached with evidence of prior conviction, but did not allow evidence of specific nature of prior offense; defendant contended evidence he should have been allowed to show prior conviction was for armed robbery to show victim was still gang member; because victim admitted he was gang member, trial court did not abuse discretion in precluding nature of prior conviction).

609.a.185 In determining whether to disclose the nature of the prior conviction, the trial court must determine the extent to which the nature of the prior conviction has probative value, and then balance that probative value against the prejudice that would result if the nature of the prior conviction were disclosed to the jurors.

*State v. Montañño*, 204 Ariz. 413, 65 P.3d 61, ¶¶ 64–66 (2003) (prison inmate witness had prior convictions for child pornography and attempted child molestation; trial court admitted fact of prior convictions, but precluded details; defendant contended nature of prior convictions was relevant because it gave witness motive to testify: if other inmates found out witness was child molester, they would have killed him, thus he made up testimony to get out of general population; court held trial court did not abuse discretion in precluding details of prior conviction, noting that defendant was still able to bring out fact of prior convictions, but did not address defendant's contention that nature of prior conviction had own independent relevance because it gave witness motive to testify).

*State v. Beasley*, 205 Ariz. 334, 70 P.3d 463, ¶¶ 16–26 (Ct. App. 2003) (defendant was charged with aggravated assault and attempted murder as result of trying to escape from police; trial court ruled state could impeach defendant with prior convictions for armed robbery, two counts of aggravated assault on police officer, resisting arrest, and two other counts of aggravated assault and allowed state to disclose nature of prior convictions; court held trial court erred in not balancing prejudicial effect of nature of prior convictions against probative value of nature of prior convictions, but that error was harmless).

## WITNESSES

**609.a.187** A trial court should sparingly admit evidence of prior convictions when the prior convictions are similar to the charged offense, thus in an appropriate case, the trial court may reduce the risk of prejudice by admitting the fact of the prior conviction without disclosing the nature of the crime.

*State v. Bolton*, 182 Ariz. 290, 302–03, 896 P.2d 830, 842–43 (1995) (defendant charged with kidnapping, burglary, and first-degree felony murder; trial court ruled state could impeach defendant with prior convictions for kidnapping, sexual abuse, possession of burglary tools, and battery; defendant testified and admitted prior convictions, and also admitted he had committed several other crimes for which he had never been charged, including theft and murder; court stated it saw “no reason to make a definitive ruling on the merits of his claim because, wholly apart from the prior convictions, defendant testified that he was a thief and had committed a murder other than the murder for which he was charged,” thus any error harmless, but did include advise about sparingly admit evidence of similar prior convictions).

*State v. Beasley*, 205 Ariz. 334, 70 P.3d 463, ¶¶ 22–25 (Ct. App. 2003) (defendant was charged with aggravated assault and attempted murder as result of trying to escape from police; trial court ruled that state could impeach defendant with prior convictions for armed robbery, two counts of aggravated assault on police officer, resisting arrest, and two other counts of aggravated assault and allowed state to disclose nature of prior convictions; court held trial court erred in not balancing prejudicial effect of nature of prior convictions against probative value of nature of prior convictions, but that error was harmless).

**609.a.220** Once trial court rules that evidence of a prior conviction is admissible, the defendant does not waive this issue by testifying and admitting the prior conviction; however, if the defendant does not testify, the defendant may not question on appeal the trial court’s ruling.

*State v. Smyers*, 207 Ariz. 314, 86 P.3d 370, ¶¶ 5–15 (2004) (trial court ruled that defendant could be impeached with his prior conviction for attempted child abuse, and would allow in evidence (1) name of offense, (2) court, (3) date of offense, and (4) whether defendant was assisted by counsel; trial court would not allow in evidence (1) class of offense or (2) facts of offense; because defendant chose not to testify, defendant waived on appeal correctness of trial court’s ruling).

**609.a.230** Once the trial court rules the probative value outweighs the prejudicial effect, if the defendant does not testify, the trial court does not have to reweigh the probative value against the prejudicial effect.

*State v. Hernandez*, 191 Ariz. 553, 959 P.2d 810, ¶¶ 20–26 (Ct. App. 1998) (court rejected defendant’s contention that, once it became apparent defendant would not testify, if trial court had reweighed probative value against prejudicial effect, it would have precluded impeachment).

### Paragraph (b) — Time limit.

**609.b.005** In determining whether to admit a prior conviction for impeachment purposes, the trial court should consider such factors as the nature of the prior offense, the similarity of the prior offense and the present charged offense, the age of the witness, the remoteness of the conviction, the length of the prior imprisonment, the witness’s conduct since the prior offense, the importance of the witness’s testimony, and the centrality of credibility issue.

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*State v. Green*, 200 Ariz. 496, 29 P.3d 271, ¶¶ 12–15 (2001) (trial court admitted 12-year-old felony under Rule 609(b); court held trial court erred in considering only one factor (centrality of credibility issue) and not considering other factors).

**609.b.010** Because convictions that are remote in time have less probative value on the issue of credibility, when it is more than 10 years since date of conviction or release from confinement, evidence of a prior conviction is admissible only if the probative value *substantially* outweighs the prejudicial effect.

*State v. Green*, 200 Ariz. 496, 29 P.3d 271, ¶ 9 (2001) (trial court admitted 12-year-old felony under Rule 609(b); court held trial court erred in considering only one factor (centrality of credibility issue) and not considering other factors).

**609.b.020** Before the trial court may admit for impeachment evidence of a conviction more than 10 years old, it must make a finding on the record that the probative value *substantially* outweighs the prejudicial effect, and must state the specific facts and circumstances that support this determination.

*State v. Green*, 200 Ariz. 496, 29 P.3d 271, ¶ 9 (2001) (trial court admitted 12-year-old felony under Rule 609(b); court held trial court erred in considering only one factor (centrality of credibility issue) and not considering other factors).

**609.b.030** Probation is not confinement, thus the time spent on probation does not extend the time for measuring the 10-year period.

*State v. Dunlap*, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (trial court erred in measuring 10-year period from expiration of probation).

### Paragraph (d) — Juvenile adjudications.

**609.d.010** Evidence of a juvenile adjudication is generally not admissible, but the trial court in a criminal case may admit evidence of a juvenile adjudication of a witness other than the accused if admission is necessary for a fair determination of guilt or innocence of the accused.

*In re Anthony H.*, 196 Ariz. 200, 994 P.2d 407, ¶¶ 8–11 (Ct. App. 1999) (trial court erred in admitting evidence of juvenile's juvenile adjudication, which state used to impeach juvenile's credibility).

**609.d.040** This rule precluding admission of juvenile adjudications does not preclude admission of evidence of juvenile arrests, provided such evidence is admitted for a proper purpose.

*State v. Corona*, 188 Ariz. 85, 932 P.2d 1356 (Ct. App. 1997) (evidence of defendant's other arrests was admissible to rebut suggestion that officers improperly recorded defendant's admission of gang membership).

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